IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 1307 of 2006

For Approval and Signature:

HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHRI PINALBHAI RAJENDRAKUMAR BHATT & 6 - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR JB PARDIWALA for petitioners
MR AY KOGJE, ADDL. PUBLIC PROSECUTOR for Respondent : 1
MR MAHESH R THAKER for Respondent : 2

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CORAM : HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 04/12/2007

ORAL JUDGMENT

1. By this application under Section 482 of the Code of

Criminal Procedure, 1973 (the Code), the applicant has prayed to quash the First Information Report dated 23rd September, 2005 lodged at Unjha Police Station vide C.R. No. I - 205/2005 for the offences punishable under Sections 403, 406, 420, 506(2) read with Section 114 of the Indian Penal Code.

2. The facts of the case stated briefly are that the respondent No.1 (hereinafter referred to as "the first informant"), lodged a complaint with the Unjha Police Station, which was registered as I Crime Register No.205/2005 for the offences punishable under Sections 403, 406, 420, 506(2) read with Section 114 of the Indian Penal Code. It is alleged in the First Information Report that, on 22nd February, 2004, the accused No.1 (the petitioner No.1 herein), in the company of his Manager (Mehtaji) named, Ramji Pachanbhai Joshi came to the shop of the first informant and informed him that they were running a factory in the name of Mateshwari Gawargam Industries in G.I.D.C., Chandisar. It was further represented to the first informant that they had a shop bearing No.222 in the name of Pinal Trading, at Gang Bazaar, Deesa, and that the business of the firm was being carried on by accused No.1 to 6 together, who are all members of one family. It is alleged in the FIR that the first informant showed few samples of Gavar to the petitioner No.1 and thereafter, the sale price of the commodity was fixed. That the petitioner No.1 informed him that, as and when he was in a position to arrange for the truck, the stock would be lifted and necessary payment would be made after obtaining the bills. That on

the basis of such assurance, the first informant delivered 792 bags of Gavar estimated at the value of Rs.8,72,520/- vide Bills Nos.6, 7, 8, 9, 10 and 11 between 24.2.2004 and 27.2.2004. On all the aforesaid bills, the Manager Ramji Joshi had put his signatures. It is the case of the first informant that, against the bill amount of Rs.8,72,520/-, six cheques drawn on Mehsana Urban Cooperative Bank Ltd., Deesa Branch were issued, which had been signed by the petitioner No.1.

3. It is also alleged in the FIR that the Manager Ramjibhai Joshi informed the first informant that, due to monetary constraint, the cheques may be deposited on 3rd March, 2004, which will be cleared. That, on 1st March, 2004, Ramjibhai called upon the first informant and conveyed that the petitioner No.1 had requested the first informant not to deposit / present the cheques for clearing as there were no sufficient funds in the account of the petitioner No.1, and the cheques may not be cleared. That the first informant may present the cheques in the bank after receiving a phone call from them.

4. It is further alleged that, four days after Holi in 2004, the father of the first informant – Champalal Hajarimal visited the house of the petitioner No.1, at Samruddhi Society, Nava Deesa for recovering the amount which is said to have been due and payable for the stock of Gavar. It is alleged that, at that point of time, the father of the petitioner No.1 - Rajendrabhai Bhatt (petitioner No.7) and grandmother of petitioner No.1 – Shardaben Bhatt (petitioner No.3) made it very clear before the father of

the first informant that they do not have money at present, and that, in case he would initiate any legal action or file a complaint before the police, they in turn would file a false complaint against the father of the first informant about abduction of petitioner No.1. It is alleged that the petitioner No.7 further threatened that they would make allegations that six cheques have been forcibly obtained in collusion with the Manager Ramjibhai Joshi. That the father of the first informant was advised to go away quietly and return the six cheques which were handed over and drawn by the petitioner No.1, and that, they were further threatened with their life.

5. In the concluding part of the First Information Report, it is alleged that many attempts have been made to contact petitioner No.1, but he is not available and other accused are also not available. It is the aforesaid First Information Report, which is subject matter of challenge in the present petition.

6. By an order dated 24th March, 2006 passed in this petition, it has been recorded that the petition is not pressed qua petitioner No.1, the petition has, accordingly, been disposed of, as not pressed, qua petitioner No.1.

7. Heard Mr.J.B.Pardiwala, learned advocate for the petitioners No.2 to 7, Mr.A.Y.Kogje, learned Additional Public Prosecutor for respondent No.1 – State of Gujarat and Mr.M.R.Thakar, learned advocate for respondent No.2.

8. Mr.J.B.Pardiwala, learned advocate for the petitioners has drawn attention to the contents of the First Information Report in question. It is submitted that a bare perusal thereof, shows that the main allegations levelled in the said FIR are against the petitioner No.1. The allegations regarding commission of offences under Sections 403, 406 and 420 of the IPC are directed against the petitioner No.1 alone. The allegations against petitioners No.3 and 7 are in respect of the offence punishable under Section 506(2) of the IPC, regarding threats having been given to the father of the complainant. As regards the petitioners No.2, 4, 5 and 6, there are no specific allegations against them and they are sought to be involved in the said offences by resorting to provision of Section 114 of the IPC, as they were partners of the firm.

9. Learned advocate for the petitioners has further submitted that the first informant has impleaded as many as seven persons of the family who have nothing to do with the business, which the petitioner No.1 (accused No.1) was carrying on. Attention is drawn to the fact that even the lady members of the family, aged 80 years and 70 years have been named in the FIR. It is pointed out that, insofar as the accused No.5 and 6 are concerned, they are not even residing at Deesa.

10. Learned advocate for the petitioners has submitted that the FIR fails to disclose commission of any of the offences alleged, namely cheating or criminal intimidation. It is submitted that, taking the allegations as they are, the ingredients necessary to constitute the offences alleged,

are lacking. It is submitted that, as regards the allegation in respect of the offences under Sections 403, 406 and 420 IPC, the allegations are only against the accused No.1, whereas there are no allegations against the accused No.2 to 7. It is submitted that, insofar as the alleged offences are concerned, there can be no vicarious liability qua accused No.2 to 7 (petitioner No.1 in the present case). It is submitted that if any particular person can be said to have committed the offence, the others cannot be held vicariously liable for the offences committed by the said person.

11. It is submitted that, insofar as the offence of criminal intimidation is concerned, the same is an afterthought, as the complaint has been lodged after a period of one and half years since the date of the alleged incident. It is further pointed out that there is no allegation qua the offence under Section 506(2) IPC against any of the accused.

12. In conclusion, it was submitted that the FIR does not disclose commission of any of the offences alleged, and that the same is, therefore, required to be quashed, in the interest of justice.

13. Mr.M.R.Thakar, learned advocate for the respondent No.2 has referred to the contents of the affidavit in-reply filed by respondent No.2. Learned advocate has referred to the letter dated 3rd March, 2004, Annexure-A to the reply addressed to the accused No.1, wherein the complainant has stated that his father and his Mehtaji would be

visiting him near about the period of Holi, and that, they should keep account payee draft for Rs.8,72,520/- ready and to hand over the same to his father. He has also referred to the complaint dated 16th August, 2004, which has been forwarded by the complainant to the Police Inspector, Police Station, Unja as well as the Dy.S.P., Visnagar and D.S.P., Mehsana, to submit that the allegations regarding criminal intimidation were not an afterthought, and that the same had been made in the said complaint dated 16th August, 2004. It is also submitted that the cheque books of the petitioner firm were found in an unclaimed bag by the Bombay Police, and the petitioners had not claimed the same from the concerned Police Station. It is submitted that the ingredients of the offences alleged are clearly made out in the FIR, hence, no intervention is called for. It is submitted that, in the circumstances, there being no merit in the petition, the same deserves to be rejected, and the interim relief granted vide order dated 24.3.2006 whereby the further investigation is stayed, is required to be vacated.

14. Mr.A.Y.Kogje, learned Additional Public Prosecutor has drawn attention to the communication dated 3rd March, 2004, Annexure-A to the affidavit in-reply of the complainant, to point out that there is nothing to show that the ingredients of Section 403, 406 and 506(2) IPC are present. It is also submitted that, upon perusal of the statement of the complainant recorded during the course of investigation, the allegations made therein do not inspire confidence. As regards the allegations of threat,

the say of the complainant in the statement is that the same should have been filed at Deesa, but was not done at the relevant time. Moreover, there is no allegation against the accused No.7 insofar as the offence of cheating is concerned.

15. This Court has perused the record of the case before it and has considered the submissions advanced by the learned advocates for the parties.

16. The learned advocate for the petitioners has, while making his submissions, also referred to criminal proceedings initiated against the Manager of the petitioners' firm, namely Ramjibhai Joshi, against whom charge sheet has been filed for fraudulently and dishonestly obtaining the cheques and thereafter, forging the signature of the accused No.1, and handing them over to the first informant. However, without entering into the said aspect as to whether the cheques had been dishonestly obtained by the Manager, the Court has examined the First Information Report as it is.

17. Upon perusal of the allegations made in the FIR, it is apparent that there is not a single allegation levelled against the petitioners No.2, 4, 5 and 6. However, they are sought to be involved by resorting to the provisions of Section 114 of the IPC, without stating as to how they are involved in the commission of the alleged offences.

18. As regards the petitioners No.3 and 7, the allegations levelled against them are in respect of the offences

punishable under Section 506(2) of the IPC. The offences alleged are said to have been committed somewhere in March 2004, three or four days after Holi, the complaint is initially sought to be lodged in respect of the said offence somewhere in the month of August 2004 by the communication dated 16th August, 2004, Annexure-B to the affidavit in-reply filed by the respondent No.2. Thereafter, the same is reiterated in the First Information Report which is lodged on 23rd September, 2005, which is subject matter of challenge in the present petition.

19. Upon perusal of the record of the case, it also appears that proceedings under Section 138 of the Negotiable Instruments Act had been initiated in respect of dishonour of the six cheques issued by the accused No.1. Notice under Section 138 of the Negotiable Instruments Act had been issued against the petitioners on 26th August, 2004, whereas the first complaint regarding cheating and criminal intimidation is made on 16th August, 2004.

20. A bare perusal of the allegations made in the complaint shows that six cheques have been issued to the complainant, however, the complainant has been told not to deposit the said cheques in the bank as there was deficit of funds. In any case, if any offence under Section 403, 406 and 420 of the IPC can be said to have been committed, the allegations are only against the accused No.1 (original petitioner No.1) in the present petition. Insofar as the allegations under Section 506(2) of the IPC are concerned, the same are levelled against the petitioners No.3 and 7 alone. Moreover, as can be seen

on bare reading of the FIR, the said offences are alleged to have been committed at Deesa. However, instead of lodging a complaint in respect of the same immediately before the concerned Police Station, a belated complaint is filed in respect of the said offence with the Unja Police Station along with other alleged offences.

21. For the foregoing reasons, this Court is of the view that this is a fit case for exercise of powers under Section 482 of the Code, as allowing the investigation to continue qua the present petitioners would amount to abuse of process of Court.

22. In the result, the application succeeds and is, accordingly, allowed. The First Information Report dated 23rd September, 2005 lodged at Unja Police Station vide Cr.R. No. I - 205/2005 for the offences punishable under Sections 403, 406, 420, 506(2) read with Section 114 of the Indian Penal Code, is hereby quashed qua petitioners No.2 to 7. Rule is made absolute accordingly.

[HARSHA DEVANI, J.]

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